

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





# 76-1413

To be argued by  
DANIEL P. HOLLMAN

B  
7/15

## United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1413

UNITED STATES OF AMERICA,

*Appellee,*

—v.—

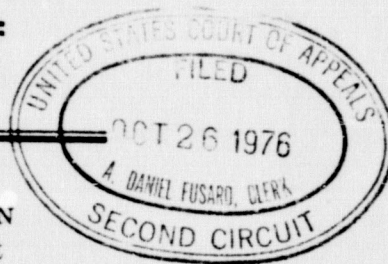
MICHAEL YANNICELLI,

*Defendant-Appellant.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF AND APPENDIX ON BEHALF OF  
APPELLANT MICHAEL YANNICELLI**

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Rec'd. U.S. Attorney  
McKathenbury

10/26/76

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 76-1413

- - - - -  
UNITED STATES OF AMERICA,

Appellee,

-v.-

MICHAEL YANNICELLI,

Defendant-Appellant.

- - - - -  
BRIEF ON BEHALF OF APPELLANT  
MICHAEL YANNICELLI

- - - - -  
PRELIMINARY STATEMENT

This is an appeal from a contempt citation of the Appellant who refused to answer questions before a federal grand jury, invoking instead, his privilege against self-incrimination. The contempt citation was ordered by the Honorable Henry F. Werker, United States Court Judge for the Southern District of New York on August 23, 1976.

Indictment 76 CR 377 was filed in the United States District Court for the Southern



District of New York on February 9, 1976 and named as defendants, thirteen individuals including Appellant herein, MICHAEL YANNICELLI. In essence, the indictment charged the defendants with conspiracy in violation of Title 18, United States Code, 371 and conducting an illegal gambling business in violation of Title 18, United States Code, 1955 and 2. (A35 ).\*

On April 4, 1976, the defendant YANNICELLI pleaded guilty to both counts of the indictment. Other of the defendants stood trial before the Honorable Robert L. Carter, United States District Judge.

On July 8 , 1976, the Court sentenced defendant YANNICELLI to a total term of imprisonment of one and one-half years on each count, to run concurrently, and was fined the sum of Ten Thousand Dollars (\$10,000.00) on Count One and Ten Thousand Dollars (\$10,000.00) on Count Two.

On August 1, 1976, counsel for defendant YANNICELLI was advised that a Writ of Habeas Corpus

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\* References preceded by "A" refer to the Appendix:



Ad Testificandum was issued for his client returnable on August 16, 1976. On August 16, 1976, defendant YANNICELLI appeared before the grand jury. He was advised by the federal prosecutor that the government was conducting an investigation into alleged official corruption in Westchester County and alleged income tax evasion by MICHAEL YANNICELLI. (A25 ). Rather than testify, defendant YANNICELLI chose to exert his Fifth Amendment privilege.

On August 23, 1976 defendant YANNICELLI was again summoned before the grand jury. This time he was requested to testify regarding the alleged participation of FRANCIS MILLOW in those gambling activities which were the subject of the original indictment, and furthermore, whether YANNICELLI was the supervisor of those gambling activities. YANNICELLI again refused to testify claiming his privilege against self-incrimination. (A30 ).

At a hearing held on August 23, 1976, Honorable Henry F. Werker, United States District Judge, determined that defendant YANNICELLI was precluded from invoking his Fifth Amendment privilege by virtue of his plea of guilty to the

original indictment. Judge Werker again asked defendant YANNICELLI if he intended to claim his privilege, and when he acknowledged that he did, he was cited for contempt. (A21 ).

Upon the application of the government, an order of confinement, pursuant to Title 28, United States Code, 1826(a) was signed on August 25, 1976. (A4 ). Defendant YANNICELLI was sentenced until such time as he would agree to answer the questions of the grand jury or until the expiration of the grand jury on April 16, 1977, or if the life of the grand jury was extended to a sentence of no more than eighteen (18) months. This sentence is currently being served by defendant YANNICELLI at the Federal Correctional Institution at Danbury, Connecticut. The running of the sentence originally imposed by Judge Carter was interrupted pending completion of the service of the sentence on the contempt violation.

#### STATEMENT OF FACTS

##### INTRODUCTION

This case involves the fundamental right



guaranteed to every citizen by the Constitution - the freedom from being compelled to testify against oneself. Our system of justice is undermined when the government deliberately seeks to avoid the burdens of independent investigation by compelling self-incriminating disclosures. In view of the circumstances described hereinbelow, the defendant YANNICELLI was properly exercising his rights in refusing to incriminate himself of other crimes. It is, therefore, urged that the contempt charge be reversed, and that defendant YANNICELLI be permitted to continue to exert his Fifth Amendment privilege.

I - BACKGROUND

A - The Original Indictment and Plea

On October 29, 1975, FRANCIS MILLOW was called before a grand jury investigating alleged violations of federal gambling statutes by defendant YANNICELLI and others. Apparently, MILLOW refused to cooperate and instead claimed his privilege against self-incrimination. On December 8, 1975 MILLOW was again brought before the grand jury,

however, this time he had been given testimonial immunity pursuant to Title 18, United States Code, 6002.

During the course of his testimony, MILLOW implicated YANNICELLI as a participant in an illegal betting operation which was based primarily in Westchester and the northern areas of Bronx County. In preparing the indictment against YANNICELLI and others, it is apparent that the government relied heavily on MILLOW's testimony.

Indictment 76 CR 377 was filed on February 9, 1976 and charged the defendants with conspiracy in violation of Title 18, United States Code, 371 and conducting an illegal gambling business in violation of Title 18, United States Code, 1955 and 2. MILLOW was named as an unindicted co-conspirator. (A35 ). On April 4, 1976 defendant YANNICELLI entered a plea of guilty to Counts One and Two of the indictment.

B - Subsequent Grand Jury Investigation

On August 16, 1976, appellant YANNICELLI appeared before a grand jury pursuant to a Writ of



Habeas Corpus Ad Testificandum. He was advised he was the target of the investigation, and that the government was looking into police corruption, as well as possible income tax violations committed by YANNICELLI. (A25 ). Upon advice of counsel, he invoked his Fifth Amendment privilege. The government does not take issue with YANNICELLI's actions on August 16, 1976.

Thereafter, on August 23, 1976, YANNICELLI was again brought into the grand jury to testify in connection with an investigation into alleged violations of Title 18, United States Code, 1955 by FRANCIS MILLOW. He was asked if he knew MILLOW, if he knew whether MILLOW had ever accepted a policy wager, and whether or not MILLOW had ever worked in a gambling operation supervised by him. (Emphasis added). To each question, YANNICELLI replied that he desired to claim his privilege against self-incrimination. (A32 ).

A hearing was then held before Judge Werker to decide if defendant YANNICELLI was entitled to assert his Fifth Amendment privilege. The government claimed that by virtue of having pled guilty

to the indictment which describes the relationship between himself and MILLOW, that YANNICELLI no longer is entitled to refuse to answer these questions. Counsel for the defendant urged that forcing YANNICELLI to testify would be violation of his Fifth Amendment privilege because it would potentially expose him to additional liability. Judge Werker ruled that YANNICELLI must answer the government's questions and cited him for contempt when he refused to do so. (A4 ). It is this ruling which is the subject of this appeal.

#### ARGUMENT

##### POINT I

Defendant was Correct in Exerting His Fifth Amendment Privilege Rather than Risk Exposure to Further Criminal Liability and Therefore His Conviction Should be Reversed.

##### A - The Fifth Amendment Privilege

The Fifth Amendment guarantees that no citizen shall be forced to offer proof of his own guilt (U.S. Const., Amend. V). As Mr. Justice Frankfurter ruled in Ullman v. United States, 350 U.S. 422 (1956). The Supreme Court is duly bound



to give to the self-incrimination clause a liberal construction if we are to keep faith with the patriots who fought for inclusion of the Bill of Rights in the Constitution and if we are to acknowledge the great policies and purposes underlying that clause.

A citizen's privilege to refuse to disclose information that would tend to be incriminating was guaranteed by the federal government in the Fifth Amendment of the Constitution and extended to the States through the Fourteenth Amendment. This privilege also has been recognized as applicable to grand jury proceedings. Counselman v. Hitchcock, 142 U.S. 547 (1892).

B - A Plea of Guilty Waives the Fifth Amendment Privilege Only in Relation to the Particular Offense Which is the Subject of the Plea

It is acknowledged that as a general proposition, a plea of guilty waives the privilege against self-incrimination for the particular offense which is the subject of the plea. See, for example, United States v. Cioffi, 242 F.2d 473 (2d Cir. 1957) cert. denied, 249 Fd 371. Also,

United States v. Romero, 249 F.2d 371 (2d Cir. 1957).

C - Government's Questions Need Not be Incriminating  
in Themselves in Order for the Defendant to  
Claim his Privilege

It is not necessary that the questions which the government asks of the defendant be incriminating in themselves. The courts have held that it is sufficient if the defendant's answers might potentially be incriminating. The widely accepted criterion for determining whether a question is incriminating is whether it might tend to constitute a link in the chain of evidence against the witness, it not being necessary that the question tend directly to incriminate the witness. See, for example, Blau v. United States, 340 U.S. 159 (1950) and Hoffman v. United States, 341 U.S. 479 (1951).

In Shendal v. United States, 312 F.2d 564 (9th Cir. 1963) a grand jury witness was cited for contempt for refusing to testify. Shendal, a manager at the Sands Hotel in Las Vegas, Nevada, had admitted travelling to Chicago to make a "collection" for his employers but refused to



answer questions as to how much money was involved and which individuals directed the operation.

Interpreting Hoffman, the Court stated that:

" . . . holds that a claim of privilege is good unless the Court can find that any prospective answer could not possibly incriminate or form a link in the chain."  
Supra. at 565

Just as the Court in Shendal indicated, that his answer to the government's questions might well prove to be the link in the chain connecting Shendal to some federal tax offense. The same must be said for defendant YANNICELLI, in view of the fact that the government has already acknowledged that he is the target of a criminal investigation involving tax evasion. (A25 ).

D - Requiring the Defendant to Answer These Questions Might Expose Him to Further Criminal Liability

At the hearing on the contempt charge, the government attorney stated:

"I would admit quite obviously if the grand jury started asking into areas such as what Mr. Yannicelli's income from the gambling operation was, that perhaps he would have a legitimate fifth amend --."

At that point, the Court replied:

"Did Mr. Yannicelli ever pay him any money or had he collected any money from Mr. Millow: all of those questions would be subject it seems to me to a fifth amendment privilege."

Those types of questions are obviously incriminating. But, equally incriminating, because it constitutes a link in the chain of evidence in a criminal tax evasion case, is the following question:

"Has Mr. Francis Millow or, as he is commonly known, Pop Millow ever worked in a gambling operation which has been supervised by you." (A32 ).

If YANNICELLI were to answer such a question, he would be acknowledging that he was a principal in the gambling operation and that would be more than he admitted in the indictment to which he pled. He would also be exposing himself to a possible federal tax indictment since he had already pled guilty admitting he was a gambler, he would now, by his own compelled testimony, admit he was a supervisor and thus, be responsible for any federal taxes due on his gambling operations. As a result, it is contended that defendant YANNICELLI



was perfectly justified in refusing to answer such a question by exerting his Fifth Amendment privilege.

In United States v. Chase, 281 F.2d 225 (7th Cir. 1960) two defendants who entered guilty pleas to violations of the Federal Bank Robbery Statute were summoned to testify before a federal grand jury regarding three bank robberies which were the subject of their plea. The defendants exerted their Fifth Amendment privilege and refused to testify. After being sentenced on contempt charges, the defendants agreed to testify in order to purge themselves. Each defendant testified as to his own activities and participation in the bank robberies but refused to identify any other person as an accomplice. The Court again imposed a sentence for contempt.

The Court began by stating that while it is up to the trial judge to determine whether the privilege afforded by the Fifth Amendment is properly invoked, he does not have unlimited discretion and must view the claim for the privilege in light of the rules and decisions of the Supreme Court. The Court here also pointed out that it is

not necessary that the answers called for would, in themselves, support a conviction for a federal crime.

The Chase Court obviously considered the question of whether the defendants' previous conviction acted as a bar to their use of the privilege. It stated:

"Of course defendants had immunity as to the offenses of which they had been previously convicted. These were embraced in two sections of the Bank Robbery Act, but there were additional sections of that Act under which they had not been prosecuted."

Accordingly, the Court held that the defendants had not waived and were still entitled to exert their Fifth Amendment privilege.

This was also the case here. In addition to the previously mentioned tax liability, YANNICELLI might still potentially be prosecuted on other gambling statutes such as interstate transmission of wagering information Title 18, United States Code, 1084, interstate or foreign travel or transportation in aid of racketeering enterprises, defined to include gambling, Title 18,



United States Code, 1952 and interstate transportation of wagering paraphernalia, Title 18, United States Code, 1953. Furthermore, if YANNICELLI were compelled to testify that he was a supervisor of a gambling operation and, thereafter, evidence of police corruption to protect this gambling operation should be developed, YANNICELLI's admissions of supervision could readily implicate him in the corruption case.

E - The Defendant May Invoke his Privilege Even if There is Only a Slight Possibility of Further Prosecution

The government has acknowledged that there are a number of investigations currently being conducted by this grand jury (A25 ). YANNICELLI has been called before them for three separate investigations, two of which he has been designated as a target. This factor alone indicates that there is more than just a potential of further criminal liability involved here. Consequently it is urged that YANNICELLI should not be forced to testify even if the government were to claim that there existed only a slight possibility of further prosecution.

In United States v. Miran, 253 F.2d 135 (2nd Cir. 1958), defendants who had been convicted of conspiracy were called before a grand jury convened to investigate intimidation of witnesses in the other alleged conspirators' trial. The defendants refused to testify and invoked their privilege against self-incrimination. The defendants here had not been originally prosecuted for the substantive crimes involved, and although the government urged that as a practical matter, a second prosecution was not likely, the Court pointed out that it was not absolutely barred either. Thus, the Court said that:

" . . . . We are thus faced with the novel question whether or not a witness can invoke his privilege against self-incrimination where practically there is only a slight possibility of prosecution." *Supra* at 139.

In upholding the right of the defendants to exert their Fifth Amendment privilege even where it appeared that the government would not prosecute, it was stated that:

"We find no justification for limiting the historic protections of the Fifth



Amendment by creating an exception to the general rule which would nullify the privilege whenever it appears that the government would undertake to prosecute." Supra at 139

The Court in Miranti concluded by stating that, " . . . the Constitution is for the dispicable as well as for the admirable", supra at 141. See also United States v. Johnson, 488 F.2d 1206 (1st Cir. 1973).

F - The Government's Need for Information Does Not Outweigh the Defendant's Right to His Privilege Against Self-Incrimination

In recent years, we have witnessed that the protection afforded by the Fifth Amendment privilege has come in conflict with governmental need for information. Traditionally, the Court has held for the right of the individual to maintain his Fifth Amendment privilege. Marchetti v. United States, 390 U.S. 39 (1968) and Grosso v. United States, 390 U.S. 62 (1968) are representative of this type of case. These cases involved the imposition by the government of an occupational and excise tax on gambling (Title 26, United

States Code, 4411 and 4412). The Supreme Court held that the disclosures required of gamblers in connection with these taxes were likely to compel self-incrimination and, therefore, were violative of an individual's rights under the Fifth Amendment.

The occupational tax cases are relevant to the defendant's present situation in another significant way. If defendant YANNICELLI were forced to answer the government's question relating to his supervisory role in this matter (A32 ), he would not only be admitting more than he pleaded to originally in the indictment but he would be exposing himself to a federal tax evasion indictment. Several cases involving payment of the occupational tax make it clear that there is distinct difference in terms of those who are engaged in gambling who have a proprietary interest (the so-called "bankers" for example) and those who do not (the so-called "pick-up men" or "runners" for example). U.S. v. Cooperstein, 221 F.Supp 522 (D.C. Mass. 1963) and U.S. v. Calamaro, 354 U.S. 351 (1957).

G - The Defendant's Motives for Invoking the



Privilege are Immaterial so long as he is  
Entitled to Assert It.

United States v. Ward, 314 F.Supp. 261

(E.D. Louisiana, 1970) was a criminal contempt proceeding growing out of a defendant Ward's refusal to testify against his former co-defendant Hodges. Ward, who had previously pleaded guilty to the charge that Hodges was now on trial for, claimed his privilege against self-incrimination when he was asked the following questions.

"Mr. Ward, when was the  
last time you saw Mr.  
Hodges." Supra at 263.

Among other things, the government urged that Ward was not seeking the privilege for his own protection but merely to shield his friend Hodges. Citing United States v. Courtney, 236 F.2d 921, 923 (2d Cir. 1956), the Court here stated:

" . . . it is firmly established  
that a witness' motives are  
immaterial so long as he is  
entitled to assert it in his  
own behalf in any event."  
Supra at 264

The Court in Ward found in favor of the defendant's right to invoke his privilege against self-incrimination. They held that despite Ward's plea of guilty further testimony by him could still

incriminate him by leading to disclosure of facts essential to his conviction of related federal and state crimes which had not been admitted by his guilty plea.

The questions which were asked of defendant YANNICELLI were even more potentially incriminating than that asked of Ward. In this matter, there is also a greater likelihood of prosecution. With the knowledge that several grand jury investigations are already being undertaken, of which YANNICELLI is the target of, at least two investigations, it is clear that questions and answers concerning his supervisor capacity over gambling operations would be incriminating.

## POINT II

The Defendant Should Not Have Been Subjected to Coercive Civil Contempt.

A - Title 28 of United States Code, § 1826

When defendant YANNICELLI continued to exert his privilege against self-incrimination after being informed by Judge Werker that it was no longer



available to him, YANNICELLI was cited for contempt under Title 28, United States Code, 1826. Recently this statute was the subject of a controversy before this same district court.

In the Matter of a Witness Harvey Johnpoll  
(United States District Court Mll-188) decided by Judge Brieant on July 16, 1976 involved a defendant convicted on a counterfeiting charge who refused to testify in a subsequent investigation of the matter. Here the defendant was granted "use immunity" under Section 6002 of Title 18, United States Code in connection with his appearance but he still refused to testify.

The Court in Johnpoll stated that:

"Title 28 of the United States Code, §1826 declares the inherent power of a common law court in relevant part as follows:

"§1826. Recalcitrant witnesses.

(a) Whenever a witness in any proceeding before or ancillary to any court or grand jury of the United States refused without just cause shown to comply with an order of the court to testify . . . the court, upon such refusal, or when such refusal is duly brought to its attention, may summarily order his confinement

at a suitable place until such time as the witness is willing to give such testimony or provide such information. No period of such confinement shall exceed the life of --

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(2) the term of the grand jury, including extensions, before which such refusal to comply with the court order occurred, but in no event shall such confinement exceed eighteen months." (Emphasis added).

The statute does not, nor could it compel the Court to confine such a recalcitrant witness. The issue is addressed to the Court's discretion and judgment, not to the wishes of a prosecutor. Perhaps as common law judges, we will best preserve our cherished institutions by exercising the power of coercive civil contempt against recalcitrant grand jury witnesses sparingly and with compassion, not against all contemnors. Rather, we should imprison only where on all the surrounding facts such vast power must be applied to vindicate society's rights and aid the proper functioning of the grand inquest in cases where it is essential to do so." Supra at 1(a) & 13.

It is submitted that such is not the case in this instance. Rather, YANNICELLI should be permitted to invoke his Constitutional safeguards,



and avoid incrimination.

### POINT III

It is Unfair for Appellant to Appear as a Target and Witness Before the Same Grand Jury.

On August 16, 1976, the appellant was advised that he was a target of two investigations. one involving police corruption and the other tax evasion. The grand jury was to determine whether sufficient evidence would be established to indict appellant for these crimes.

Seven days later, appellant was called before the grand jury in a new capacity, that of a witness compelled to testify. One of the first things that was established before the grand jury was that he was a convicted felon having pled guilty to the indictment referred to herein. If the government is to be sustained in its position, then appellant would have to further testify to facts involving his activity in gambling operations, his associations, and the method in which he does business. Thus, the same grand jury is in a

position where they may indict appellant and also receive evidence of his prior conviction. (A30) In addition, they will receive compelled testimony which they may well consider with regard to the return of any indictment against appellant. It is noteworthy that the Assistant who presented these matters to the grand jury, did not give them any type of cautionary instructions on August 23, 1976 that they were not to consider this testimony with regard to YANNICELLI's previous appearance as a target. It is submitted that a cautionary instruction would not have corrected this clearly prejudicial procedure.

Any grand jury that is impanelled under Rule 6, of the Federal Rules of Criminal Procedure, or one that is impanelled under any other federal authority, should not receive testimony that is clearly prejudicial and which precludes them from judging a target's culpability on the merits. While the government may argue that YANNICELLI has no position to raise this issue until he is indicted, it is submitted that such a procedure admits to a violation of a person's rights who



appears before the grand jury and leaves the ability to correct such serious infractions in the hands of the government prosecutor. The government may well argue if no indictment is returned there has not been any violation of appellant's rights. Obviously, appellant's right to a grand jury free of bias and prejudice has already been violated. A grand jury, if it is to proceed fairly, must not be in a position of determining whether there is substantial evidence to indict him, and further hear evidence of his previous criminal record, as well as his compelled testimony involving his criminal activities.

#### CONCLUSION

In view of the foregoing, it is requested that defendant YANNICELLI be released from the service of the remainder of his sentence under Title 28, United States Code, 1826. Further, it is urged that the time which defendant

YANNICELLI has already served be applied to the sentence imposed by Judge Carter on the original indictment.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT  
Docket No. 76-1413

- - - - -

UNITED STATES OF AMERICA,

Appellee,

-v.-

MICHAEL YANNICELLI,

Defendant-Appellant.

- - - - -

On Appeal From The United States District Court  
For the Southern District of New York

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A P P E N D I X

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DOCKET ENTRIES

M19-97 WIRETAP, etal TITLE 18 SECTION 2518

DATEFILINGS-PROCEEDINGS

- 61 Aug. 17-76-- Filed one brown envelope ordered sealed -- containing Application and Sealing Order -- and placed in vault in Rm. 66. WERKER, J.
- 61 Aug. 17-76-- Filed one brown envelope ordered sealed-- containing 25th Day Report-- and placed in vault in Rm. 66. CONNER, J.
- 64 Aug. 17-76-- Filed one brown envelope ordered sealed--containing 15th day report-- and placed in vault in Rm. 66-- to be sealed and unsealed only at direction of the Court. MacMAHON, J.
- 61 Aug. 20-76-- Filed one brown envelope ordered sealed and placed in vault in Rm. 66--to be sealed and unsealed only at direction of the Court. CONNER, J. (containing application & sealing order).
- 61 Aug. 20-76-- Filed one brown envelope ordered sealed and placed in vault in Rm. 66-- postponement of notice-- to be sealed and unsealed only at direction of the Court. CONNER, J.
- 63 Aug. 25-76-- Filed one brown envelope ordered sealed and placed in vault in Rm. 66-- (order & affdvt.)--to be unsealed only at the direction of the Court. WERKER, J.
- 63 Aug. 26-76--Filed one brown envelope ordered sealed and placed in vault in Rm. 66-- (30th day and final report)-- to be unsealed only at the direction of the court. WERKER, J.



A 1(a)

DATE :

FILINGS-PROCEEDINGS

- 64 Aug. 27-76-- Filed one brown envelope ordered sealed and placed in vault in Rm. 66- (10 day report) -- to be unsealed only at the direction of the Court. GOETTEL, J.
- 63 Sept. 2-76-- Filed Notice of Appeal from the final judgment of conviction ordered by the Hon. H.P. Werker, USDJ for SDNY, on 8-23-76. M/n Robert Fiske, U.S. Atty., SDNY: and Michael Yannicelli, MCC, 1 St. Andrews Plaza, N.Y., N.Y. 10007

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

A 2  
U.S.C.A. 10.

USA

vs

Gammicelli

CASE NO. M-19-9

DATE HEW

EXTRACT OF COURT REPORT

FILE

PROCEEDINGS

9-27-76

Filed transcript dated  
8-2-76

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CLERK

A. E. Thompson

Thompson

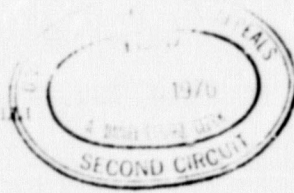
76-1413



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
U.S.A.

-----X  
MICHAEL YANNICELLI



CASE NO. 76-14-97

JUDGE Weber

-----X  
EXTRACT OF COURT ENTRIES

DATE

PROCEEDINGS

10-20-76 Filed stipulation that certain Grand Jury minutes be unsealed & added to the record on appeal.

10-20-76 Filed order that certain Grand Jury Minutes be released for transmission to U.S.C.A.

*Michael Yannicelli*

ORDER OF COURT CITING  
FOR CONTEMPT AUGUST 25, 1976

A 4

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE MICHAEL YANNICELLI, :

ORDER

A WITNESS BEFORE THE

:

GRAND JURY

M 11-188

-----X

IT APPEARING to the satisfaction of the  
Court:

1. That on April 27, 1976, the witness,  
MICHAEL YANNICELLI, entered a plea of guilty  
before the Honorable Robert L. Carter, United  
States District Judge for the Southern District of  
New York, to Indictment Number S76 CR. 377,  
attached as Exhibit A, which charged him, inter  
alia, with conspiring with Francis J. Millow and  
others to violate Title 18, United States Code,  
Section 1955.

2. That on July 30, 1976, a writ of  
habeas corpus ad testificandum was issued which  
ordered the Warden of the Federal Correctional  
Institution at Danbury, Connecticut, to produce



A 4(a)  
the witness, MICHAEL YANNICELLI, before a grand jury empaneled in this District so that he could testify in connection with an investigation being conducted by the New York Joint Strike Force

3. That on August 23, 1976, the witness, MICHAEL YANNICELLI, was brought before the aforesaid grand jury and advised that the grand jury was investigating Francis J. Millow's role in the unlawful gambling operation that was described in the indictment to which the witness, MICHAEL YANNICELLI, had pled guilty on April 27, 1976; that the witness, MICHAEL YANNICELLI, refused to testify before the aforesaid grand jury about Francis J. Millow's role in the unlawful operation on the ground of his Fifth Amendment privilege against self-incrimination; that despite this Court's ruling that because of his guilty plea to Indictment Number S76 CR. 377, the witness, MICHAEL YANNICELLI, could not refuse to testify on the ground of his Fifth Amendment privilege, the witness, MICHAEL YANNICELLI, continued to refuse to testify on that ground; and application having been made by the Government on

A 4(b)

August 23, 1976 for an order of confinement pursuant to Title 28, United States Code, Section 1826(a), and the Court being satisfied that the witness, MICHAEL YANNICELLI, has refused unlawfully to testify before the said grand jury with full understanding of his obligation to testify, it is hereby

ORDERED that MICHAEL YANNICELLI be committed to the custody of the Attorney General of the United States at the Metropolitan Correctional Center, New York, New York, until such time as he is willing to testify before said grand jury or until the expiration of the term of said grand jury (April 15, 1977, subject to an eighteen month extension), whichever first occurs, but said confinement in no event to exceed eighteen months.

IT IS FURTHER ORDERED that said confinement shall interrupt the two one and one half year federal sentences presently being concurrently served by MICHAEL YANNICELLI, which sentence was imposed on July 8, 1976 by the Honorable Robert L.



A 4(c)

Carter, United States District Judge for the Southern District of New York, for violation of Title 18, United States Code, Sections 371 and 1955, and which sentence shall not resume until the confinement directed by this Order is terminated.

Dated: New York, New York  
August 25, 1976

---

(Henry F. Werker)  
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X

In re:

MICHAEL YANNCELLI

Before Grand Jury

M-11-188

M-19-97

-----X

Before:

HON. HENRY F. WERKER,

District Judge

New York, New York, August 2<sup>3</sup>, 1976, 10:30 a.m., Room 506

APPEARANCES:

MICHAEL ABZUG, ESQ.  
United States Attorney  
For the Government

DANIEL P. HOLLMAN, ESQ.  
Attorney for the Defendant  
27 East 39th Street  
New York, New York 10016

Also Present:

MEL WINTER, Grand Jury Court Reporter

THOMASINA AMARINO, Grand Jury Forelady

- - -



1  
2 MR. ABZUG: Your Honor, may I just make some  
3 preliminary introductions. I am Michael Abzug from the  
4 Strike Force. Seated to my right is Mr. Mel Winter. He's  
5 a grand jury reporter. Seated next to him is Thomasina  
6 Amarino. She is our grand jury forelady. This is  
7 Mr. Dan Hollman. He is an attorney that represents the  
8 grand jury witness in this case, Mr. Yancelli.

9 Your Honor, if I just may briefly recite the  
10 facts in this case. In February of 1976 the witness  
11 before you now, Mr. Yancelli, was indicted by a grand  
12 jury impanelled in this district for violating Title 18  
13 United States Code Section 1955 which, as you know, is  
14 the statute which prohibits unlawful gambling operations  
15 in conspiring to do so in violation of Title 18 United  
16 States Code 371.

17 It is a two count indictment. In the text  
18 of the conspiracy indictment, the grand jury charges that  
19 Mr. Yancelli conspired with 12 other named defendants  
20 and a number of unindicted co-conspirators, among which  
21 was an individual by the name of Francis J. Millow.  
22 Mr. Millow was an unindicted co-conspirator.

23 Subsequently the matter was assigned to  
24 Judge Carter on --

25 Incidentally, I have a copy of the indictment

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2 for your inspection if you wish. It has been marked  
3 into evidence at the grand jury as grand jury Exhibit  
4 Number 1.

5 Subsequently, the matter ~~was~~ assigned to Judge  
6 Carter, and on April 27, 1976, two months after the indict-  
7 ment, Mr. Yanncelli pled guilty to both counts of the  
8 indictment which has been marked into evidence as grand  
9 jury Exhibit Number 1. I have the transcript of that  
10 plea with me, your Honor.

11 THE COURT: Mr. Hollman, is there any ques-  
12 tion that Mr. Yanncelli pled to both counts of this  
13 indictment?

14 MR. HOLLMAN: There is none.

15 MR. ABZUG: Today Mr. Yanncelli was brought  
16 into the grand jury to testify in connection with the  
17 grand jury investigation into alleged violations of  
18 Title 18, United States Code, Section 1955 by Mr. Milow,  
19 the unindicted co-conspirator named in this indictment.

20 On Friday, last Friday, I called Mr. Hollman  
21 to advise him of the nature of the grand jury inquiry.  
22 Mr. Hollman as you see, appeared today. I advised  
23 Mr. Yanncelli that the grand jury -- of the scope of the  
24 grand jury investigation. I advised him of his Constitu-  
25 tional rights, and I asked him a number of questions



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2 pertaining to his relationship with Mr. Millow.

3 The questions are here to be read back to you  
4 by the grand jury reporter, but to my recollection I  
5 asked him, "Do you know Mr. Millow?". He refused to  
6 answer on the grounds of his fifth amendment privilege.  
7 I asked him **within** the past five years does he know  
8 whether Mr. Millow ever accepted a policy wager. Again,  
9 he refused to answer on the grounds of his fifth amendment  
10 privilege. And I asked him, finally When did he begin  
11 or when did Mr. Millow begin working in the gambling  
12 operation which he supervised. Mr. Yanncelli refused  
13 to answer on the grounds of his fifth amendment privilege.

14 Your Honor, it is the Government's position  
15 that by virtue of Mr. Yanncelli's having pled to the in-  
16 dictment which describes the relationship between him  
17 and Mr. Millow, that Mr. Yanncelli no longer has a fifth  
18 amendment privilege to assert to refuse to answer ques-  
19 tions pertaining to Mr. Millow's unlawful activities with  
20 respect to the gambling operation charged in this in-  
21 dictment; and I respectfully invite the Court's attention  
22 to a circuit case, captioned "United States versus Caesar  
23 Romero," R-o-m-e-r-o, cited at 249 Federal Section 371  
24 at page 375 in which the **Second Circuit** rules that  
25 once a witness has been convicted for a transaction in

question, as I submit Mr. Yanncelli has been here, he no longer is able to claim the privilege of fifth amendment, and may be compelled to testify.

I submit, your Honor, under the authority of that case that Mr. Milow -- excuse me -- Mr. Yanncelli has no fifth amendment privileges to assert, and this Court should compel him to testify.

Thank you, your Honor.

THE COURT: May I see the copy of the indictment, please.

MR. ABZUG: The opinion?

THE COURT: The indictment. I will listen, Mr. Hollman.

MR. HOLLMAN: The issue is whether or not Mr. Yanncelli has the right to invoke his Constitutional privilege, and that is the right to refuse to testify on the grounds that it may tend to incriminate him of some Federal crime.

What Mr. Abzug has neglected to mention is that this grand jury has at least two other additional investigations going on, including the one involving Mr. Milow, for potential conspiracy to violate the gambling laws.

One is as a result of the indictment



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2 Mr. Yanncelli pled to at the time Mr. Abzug accepted the  
3 plea and Judge Carter accepted the plea.

4 There are allegations concerning police  
5 corruption in Westchester County.

6 Mr. Yanncelli has been brought before this  
7 grand jury to testify whether or not he knows anything  
8 about police corruption.

9 More important, from Mr. Yanncelli's point of  
10 view, he is also potentially subjected to a possible in-  
11 dictment for income tax evasion. Obviously, asking him  
12 a question as Mr. Abzug did before the grand jury --  
13 "When did Mr. Milrow work for you?"-- while Mr. Yanncelli  
14 supervised the gambling operation, would be something  
15 clearly within the realm of a potential income tax viola-  
16 tion because of Mr. Yanncelli exercising a supervisal-  
17 type of capacity.

18 He would also be liable to pay any taxes.  
19 Mr. Yanncelli is asserting his privilege not based on  
20 his prior plea, but the potential other indictment, if  
21 they can develop the case, either on tax evasion or police  
22 corruption.

23 Mr. Yanncelli certainly has the fifth amend-  
24 ment privilege, the right to refuse to answer, otherwise  
25 he's going to be placed again before this Court and be

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2 convicted possibly on his own statements before the grand  
3 jury.

4 This is not what the grand jury was impaneled  
5 to do.

6 On that basis I submit to your Honor he has  
7 every right to assert his privilege on the grounds that  
8 he's a target of this investigation and has been told he  
9 is a target of this investigation.

10 THE COURT: Mr. Abzug?

11 MR. ABZUG: Your Honor, our response to that  
12 is quite simple. There are a number of investigations  
13 that this grand jury is conducting. One of them is the  
14 police-corruption aspect that Mr. Hollman mentioned.

15 Mr. Yanncelli was brought before a grand jury  
16 last week with Mr. Murty, and asked questions pertaining  
17 to that particular investigation.

18 Mr. Yanncelli refused to answer those questions,  
19 and that refusal was respected by the Government.

20 The questions that he is now being asked are  
21 distinguishable, I would submit, from those which might  
22 incriminate him with respect to a possible indictment,  
23 stemming from the allegations of the police corruption in  
24 Westchester County; and that therefore I would submit  
25 that Mr. Hollman's objections are somewhat irrelevant.



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The question before your Honor, the questions that are being asked by the grand jury are limited in scope. They pertain only to Mr. Millow, and I think that if the grand jury's inquiry is restricted to Mr. Yanncelli's relationship with Mr. Millow, and not in any way getting into the area of police corruption --

THE COURT: How about income taxes?

MR. ABZUG: Well, the questions can be narrowly framed so that -- well, I would submit that the mere fact that Mr. Yanncelli might admit that Mr. Millow is working or is associated with him in the gambling operation which is mentioned in the indictment does not necessarily or can not -- is not incriminating to him in the income tax sense.

I would admit quite obviously, if the grand jury started asking into areas such as what Mr. Yanncelli's income from the gambling operation was, that perhaps he would have a legitimate fifth amendment --

THE COURT: Did Mr. Yanncelli ever pay him any money or had he collected any money from Mr. Millow; all of those questions would be subject it seems to me to a fifth amendment privilege.

MR. ABZUG: Yes, your Honor.

THE COURT: Also, I would say this. I don't

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2 know when this indictment was filed. It does not show  
3 on its face. It must have been some time

4 MR. ABZUG: It was February 9, 1976.

5 THE COURT: So that your questions must be  
6 limited to the framework with respect to at least Count 1  
7 from September 1, 1968 to the date of the indictment, and  
8 with respect to the second count of the indictment from  
9 on or about April 15, 1971 until the date of the filing  
10 of the indictment.

11 MR. ABZUG: If I understand your Honor's  
12 direction, perhaps the way we can resolve this is this:  
13 when Mr. Yanncelli reappears before the grand jury, the  
14 grand jury will limit its questions specifically to  
15 Mr. Millow's activity without reference to whatever his  
16 relationship might have been with Mr. Yanncelli. The  
17 grand jury may ask questions as to Mr. Millow's relation-  
18 ship with other people charged in the indictment, but not  
19 Mr. Yanncelli. That way we will insulate Mr. Yancelli  
20 from testifying with respect to any activities directly  
21 involving himself.

22 MR. HOLLMAN: Your Honor, I would object to  
23 that. If the grand jury is going to ask Mr. Yanncelli  
24 whether or not Mr. Millow is engaged in gambling operations,  
25 and deletes his name, Mr. Yanncelli is going to say yes



1 to that, that is part of the web that is going to incriminate him of some kind of Federal violation and probably  
2 income tax evasion because he's going to be aware of a  
3 gambling operation going on of which Mr. Millow is a part  
4 and the obvious inference to be drawn from that is that  
5 Mr. Yanncelli also is a part of it since he's aware of it.

6 Therefore, he's not protected at all by any  
7 type of deletion of his name. He's going to admit to  
8 knowledge that he knows about a gambling operation.

9 I submit, if anyone has a fifth amendment  
10 privilege, it is certainly him.

11 THE COURT: I suggest Mr. Yanncelli might  
12 plead to the conspiracy charge and the other charge in  
13 this indictment; he has already admitted knowing a gamb-  
14 ling operation was going on, so it is absurd to say at  
15 this particular juncture the Government is not already in-  
16 vestigating him for income tax avoidance or evasion, and  
17 so forth and so on.

18 MR. HOLIMAN: I submit --

19 THE COURT: The point is that by further ad-  
20 missions as to participation of Mr. Millow or other named  
21 or unnamed conspirators, it seems to me, would not enlarge  
22 or infringe upon the rights of Mr. Yanncelli.

23 MR. HOLLMAN: I submit to your Honor that it

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2 would show that he is part of a gambling operation; that  
3 he has knowledge thereof.

4 THE COURT: He has admitted that.

5 MR. HOLLMAN: It will show he is responsible  
6 for the taxes not paid.

7 THE COURT: The same thing would be true as of  
8 this date because he has admitted to the two charges in  
9 the indictment.

10 MR. HOLLMAN: He has not admitted to being  
11 the principal, a person in charge. He has not.

12 THE COURT: If he is not a principal, if he  
13 has not given any directions, then he does not have to  
14 say anything. He has admitted being a principal to the  
15 conspiracy.

16 MR. HOLLMAN: He has admitted to being nothing  
17 more than one of 13 people and I don't think all 13  
18 people will be charged with tax involvement but only  
19 the principals thereof; and, if Mr. Yanncelli admits  
20 anyway that he is directing Mr. Millow or knows of his  
21 activities or receives money from Mr. Millow or directed  
22 him to run the activities, then he has gotten himself in-  
23 volved with tax evasion.

24 THE COURT: They are entirely different things.  
25 With respect to meetings with Mr. Millow or directing



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2 Mr. Millow to do certain things, **etc etera**. Those things  
3 I will direct Mr. Yanncelli to answer, but not with  
4 respect to the collection of any monies.

5 He's an intelligent man. He's got a right to  
6 make up his mind as to whether one thing or another. If  
7 he decides during the course of the grand jury investiga-  
8 tion that a question is one that would not be permitted  
9 by the Court under this direction, then he has every right  
10 to say to Mr. Abzug, "Mr. Abzug, I will claim my fifth  
11 amendment privilege on that matter, and I would like the  
12 question to be referred to the Court."

13 MR. HOLLMAN: It seems to me that the Govern-  
14 ment last week -- they had an investigation in Westchester  
15 County concerning police corruption. Unsuccessful in  
16 having Mr. Yanncelli testify last week in that type of  
17 investigation, they now decide the way they will do it  
18 is selecting Mr. Millow as a target, and therefore force  
19 Mr. Yanncelli to avoid taking his fifth amendment privilege.

20 I think it is a blatant abuse of Mr. Yanncelli's  
21 Constitutional privileges, and I'm going to advise him to  
22 take fifth amendment privileges in connection with any  
23 connection he has with Mr. Millow. I don't see how he's  
24 going to get himself into anything but another indictment.

25 THE COURT: If you advise him to do that, then

1  
2 I will have no alternative but to commit him until such  
3 time as he answers or until the date of the expiration of  
4 this grand jury, whichever is sooner.

5 MR. HOLLMAN: Let me see what the questions  
6 are.

7 MR. ABZUG: The questions, the initial ques-  
8 tions will be the first three questions, in any event, that  
9 were asked, that which you just took the fifth amendment  
10 privilege.

11 MR. HOLLMAN: One of them I know suggests  
12 Mr. Yanacelli supervised Mr. Millow, which certainly pro-  
13 vides him with a certain amount of evidence.

14 THE COURT: He can say, "I did not supervise  
15 him." All he has to do is answer it, "I did not super-  
16 vise it.", if that is the truth.

17 MR. HOLIMAN: Certainly then there may be other  
18 evidence that indicates it is not the truth, and therefore  
19 he will be subjected to admissions before the grand jury.  
20 It will be used against him in an income tax-evasion case.

21 THE COURT: He will be subjected to perjury  
22 if it is not the truth.

23 MR. HOLLMAN: That is why he wanted to exercise  
24 the fifth amendment privilege.

25 THE COURT: Everyone wants to exercise the



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2 fifth amendment privilege because they are afraid of  
3 perjury. I am telling you, in my opinion, there is  
4 nothing in those three questions which would not be con-  
5 tained within the framework of this indictment; and I am  
6 directing Mr. Yanncelli to answer those three questions.

7 If you are asserting his fifth amendment priv-  
8 ilege as to those three questions, I will remand him to  
9 the Marshal.

10 MR. HOLLMAN: Your Honor, I think based on my  
11 understanding of what his rights are, and not at all to  
12 suggest your Honor is wrong, I would like the opportunity  
13 to appeal your Honor's decision here and see if I can't  
14 get a clarification of the Court of Appeals.

15 THE COURT: You can do that anytime you wish.  
16 In the mean time Mr. Yanncelli is going to be committed.

17 MR. HOLLMAN: All right.

18 THE COURT: Mr. Yanncelli, do you understand?

19 MR. YANNCELLI: Yes, your Honor.

20 THE COURT: Your counsel has indicated to me  
21 that you will assert your fifth amendment privilege to  
22 the three questions that Mr. Abzug asked you initially be-  
23 fore the grand jury: and is that your wish?

24 MR. YANNCELLI: Yes, your Honor.

25 THE COURT: You understand that if you persist

1 in that assertion of a fifth amendment privilege under  
2 the circumstances that you have pled guilty to this indict-  
3 ment, I have no alternative but to commit you until such  
4 time as you will answer those questions or until the ex-  
5 piration of the grand jury; which is when?  
6

7 MR. ABZUG: April 16, 1977, your Honor.

8 THE COURT: Do you understand that,  
9 Mr. Yanncelli?

10 MR. YANNCELLI: Yes, your Honor.

11 MR. ABZUG: Your Honor, just so the record is  
12 clear, I think it might be useful if the reporter read the  
13 first three questions into the record.

14 THE COURT: Would you read the first three  
15 questions and responses?

16 MR. WINTER: Yes, your Honor.

17 "Q Mr. Yanncelli, do you know an individual by  
18 the name of Francis J. Millow?

19 "A I refuse to answer.

20 "Q Do you know an individual by the name of  
21 Pop Millow?

22 "A I refuse to answer.

23 "Q Do you know whether in the past five years  
24 Pop Millow or Mr. Francis Millow has ever accepted a  
25 policy wager?



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2 "A I refuse to answer.

3 "Q Has Mr. Francis Millow or, as he is commonly  
4 known, Pop Millow ever worked in a gambling operation  
5 which **has** been supervised by you?

6 "A I refuse to answer."

7 THE COURT: There were four questions: and  
8 I will direct Mr. Yanncelli to answer those four questions.  
9 As I understand it, from him and from you, Mr. Hollman, he  
10 refuses on his fifth amendment privilege basis?

11 MR. HOLLMAN: That's correct, your honor. He  
12 does.

13 MR. ABUZG: Your Honor, in the light of  
14 Mr. Yanncelli's refusal, the Government moves for an  
15 order committing him to the custody of the Marshal until  
16 such time as he agrees to comply with your Honor's order.

17 The Government also will, if your Honor di-  
18 rects, draft up an order which will modify your Honor's  
19 direction that he be remanded to the custody of the  
20 United States Marshal, and that the sentence that he  
21 serves while he is in the custody of the Marshal should  
22 run consecutively with the sentence that he is currently  
23 serving that was imposed upon him by Judge Carter as a  
24 result of his plea of guilty to the indictment that your  
25 Honor has before you.

1  
2 MR. HOLLMAN: I would suggest, your Honor,  
3 that that part of the sentence will probably be illegal  
4 because he can be sentenced up until a term of the grand  
5 jury, which I gather is April 16, 1977.

6 Mr. Abzug seems to be suggesting Judge Carter's  
7 sentence be served, and then assuming Mr. Yanncelli was  
8 let out in 1978 under Judge Carter's sentence, then he  
9 would start with the grand jury sentence which I think is  
10 clearly unfounded in the legal sense.

11 MR. ABZUG: What I am suggesting is what the  
12 Court has done in the past, which is simply hold the run-  
13 ning of Judge Carter's sentence which was imposed on  
14 June 8, 1976. The sentence that was imposed was an 18  
15 month sentence -- two 18 month sentences, one on each  
16 count, plus a \$20,000 fine until such time as Mr. Yanncelli  
17 agrees to comply with the Court's order.

18 MR. HOLLMAN: I don't know --

19 THE COURT: I think that is legal for me  
20 to do and I will so do that.

21 The defendant is remanded.

22 THE MARSAHLI: How about the writ?

23 MR. ABZUG: It is not satisfied.

24 Excuse me, on the record, there is a question  
25 about just satisfying the writ. The writ I imagine will



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remain unsatisfied until Mr. Yanncelli agrees to comply with Judge Werker's order.

THE COURT: That is right. He is starting to serve a sentence that I have imposed as of this time, as of now, so that the writ is unsatisfied until such time as his sentence is completed; and he will remain in the MCC for that period of time under my sentence.

MR. ABZUG: Thank you, your Honor.

- - -

GRAND JURY TESTIMONY OF APPELLANT  
AUGUST ~~22~~<sup>16</sup> 1976

UNITED STATES GRAND JURY

A 24

SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

-v- :

FNU (DIORIO) :

- - - - - x

United States Courthouse  
Foley Square  
New York, New York

August 16, 1976  
2:10 p.m.

-----

MICHAEL D. ABZUG, ESQ.,

Special Attorney, U. S.  
Department of Justice

STEVEN KLEIN

Acting Grand Jury Reporter

NATIONAL REPORTING INC.  
CERTIFIED SHORTHAND REPORTERS  
FIVE WORLD TRADE CENTER  
NEW YORK, N. Y. 10018  
[212] 466-1260





1  
2 MICHAEL YANNICELLI, called as a witness,  
3 having been duly sworn by the Foreman of the Grand Jury,  
4 testified as follows:

5 BY MR. ABZUG:

6 Q State your name.

7 A Michael Yannicelli.

8 Q Spell the last name.

9 A Y-a-n-n-i-c-e-l-l-i.

10 Q Mr. Yannicelli, my name is Michael D. Abzug, I am  
11 a Special Attorney with the United States Department of  
12 Justice. You have been subpoenaed to testify before this  
13 Grand Jury in connection with the Grand Jury's investigation  
14 into certain possible violations of Federal law, specifically  
15 those laws forbidding public corruption and income tax eva-  
16 sion.

17 Before we proceed, let me advise you what your rights  
18 are under the United States Constitution. You have an abso-  
19 lute right against self-incrimination, anything you say be-  
20 fore this Grand Jury can and may be used against you in any  
21 type of proceeding whatsoever, do you understand that?

22 A Yes.

23 Q Secondly, you have an absolute right to counsel;  
24 by counsel, I mean lawyer.

25 Now, you have retained counsel in this matter, have

1  
2 you not?

3 A Yes.

4 Q His name is Dan Hollman?

5 A Yes.

6 Q He is outside in the anteroom?

7 A Yes.

8 Q In a Grand Jury proceeding the right to counsel is  
9 somewhat conditioned. By that I mean Mr. Hollman cannot be  
10 present in the Grand Jury room with you, he must remain out-  
11 side in the anteroom.

12 However, if during the course of the Grand Jury in-  
13 vestigation you wish to consult with Mr. Hollman, you need  
14 only indicate your desire to Mr. Krugman, the Grand Jury  
15 Foreman seated to your right, he will excuse you to consult  
16 with counsel.

17 I also want to advise you, Mr. Yannicelli, that as  
18 I told your attorney, Mr. Hollman, you are a target of this  
19 Grand Jury investigation.

20 Now, bearing all that in mind, Mr. Yannicelli, I  
21 want to know whether you know an individual by the name of  
22 Diorio?

23 A I refuse to answer on the ground that it will tend  
24 to incriminate me.

25 Q Do you know an individual named Sosh?



1  
2 A I am refusing to answer. It is the Fifth I am en-  
3 titled to take?

4 Q If I continued to ask you questions about your rela-  
5 tionship with the individuals that I just mentioned to you,  
6 as well as other individuals connected with local law en-  
7 forcement in Westchester County, will you continue to assert  
8 your Fifth Amendment privilege?

9 A Do I have to do anything, is it my right to answer?

10 Q It is your right to invoke the Fifth Amendment under  
11 the United States Constitution.

12 A You said I don't have to answer?

13 Q Is that your intent?

14 A The Fifth I am taking if I am entitled to it.

15 MR. ABZUG: Mr. Foreman, will you temporarily  
16 excuse this witness?

17 THE FOREMAN: You are temporarily excused.

18 [Witness excused.]  
19  
20  
21  
22  
23  
24  
25

GRAND JURY TESTIMONY OF APPELLANT  
AUGUST 23, 1976

UNITED STATES GRAND JURY

A 28

SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-v-

FRANCIS J. MILLOW

:

:

:

:

-----X

United States Courthouse  
Foley Square  
New York, New York

August 23, 1976  
3:00 o'clock p.m.

APPEARANCES:

MICHAEL D. ABZUG,

Special Attorney  
U. S. Department of Justice

MEL WINTER,  
Acting Grand Jury Reporter

NATIONAL REPORTING INC.  
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FIVE WORLD TRADE CENTER  
NEW YORK, N. Y. 10018  
[212] 466-1280

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M I C H A E L   Y A N N I C E L L I ,

called

as a witness, having been duly sworn by the Forelady  
of the Grand Jury, testified as follows:

BY MR. ABZUG:

Q Mr. Yannicelli, my name is Michael D. Abzug. I am  
a special attorney with the Department of Justice.

You have been subpoenaed before this Grand Jury to  
testify in connection with a Grand Jury investigation into  
certain possible violations of federal law, specifically  
those laws prohibiting gambling in violation of Title 18,  
U. S. Code, Section 1955, and conspiring to do so in  
violation of Title 18, U. S. Code, Section 371.

Specifically, the Grand Jury is interested in the  
activities of a man known to you by the name of Francis  
J. Millow, or Pop Millow.

The scope of this investigation is defined--

MR. ABZUG: Will you mark this as Grand Jury's  
Exhibit 1?

(So marked.)

Q --is defined what I have marked into evidence as  
Grand Jury's Exhibit 1, and for the record, this is an  
indictment which charges you and 12 other people with viola-  
ting Title 18, U.S. Code, Section 1955, and Title 18, U. S.  
Code, Section 371.

1  
2 It also charges that you conspired with another  
3 unindicted co-conspirator by the name of Francis J. Milloy.

4 Have you seen this document before?

5 A (Witness nods.)

6 Q When you nod your head, it doesn't reflect on the  
7 record.

8 Have you seen this document before, sir?

9 A I refuse to answer. It is my right.

10 Q Well, your rights before this Grand Jury will be  
11 determined by a federal judge in a moment, Mr. Yannicelli.

12 You are refusing to answer whether you have seen  
13 this document before?

14 A Yes.

15 Q Are you refusing to state that--whether or not you  
16 pled guilty to the charges contained in this indictment?

17 A I am just pleading on my rights. I don't know what  
18 my rights are.

19 Q Are you refusing to answer?

20 A What is my rights?

21 Q You have an attorney in this matter; do you not?

22 A Yes.

23 Can I go and consult with him?

24 Q If you wish.

25 His name is Hollman. He is out in the anteroom; is



1 that correct?

2 A Yes.

3 MR. ABZUG: Consult.

4 Let the record reflect that it is now--

5 THE FORELADY: A quarter after, 3:15.

6 (The witness leaves the room.)

7 (The witness returns.)

8 MR. ABZUG: Let the record reflect that it is now

9 3:16.

10 BY MR. ABZUG:

11 Q Have you had an opportunity to consult with your  
12 attorney?

13 A Yes.

14 Q Are you prepared to answer whether or not you pled  
15 guilty to the charges contained in what has been marked into  
16 evidence as Grand Jury's Exhibit 1?

17 A I stand--if that's my right, I am still taking the  
18 Fifth.

19 Q You refuse to answer on the grounds of your Fifth  
20 Amendment privilege; is that correct?

21 A Yes.

22 Q Mr. Yannicelli, now that I have defined for you  
23 the nature of this investigation, I am going to advise you  
24 what your constitutional rights are:  
25

1                    You have an absolute right to counsel. By counsel,  
2  
3 I mean lawyer. You have retained an attorney; have you  
4 not?

5            A Yes.

6            Q And his name is Dan Hollman?

7            A Yes.

8            Q He is outside in the anteroom.

9            You have had an opportunity to consult with Mr.  
10 Hollman about this investigation out in the anteroom be-  
11 fore you came in; is that right?

12          A Yes.

13          Q Now, Mr. Yannicelli, when did--strike that.

14            Do you know an individual by the name of Francis  
15 J. Millow?

16          A I refuse to answer.

17          Q Do you know an individual by the name of Pop Millow?

18          A I refuse to answer.

19          Q Do you know whether, in the past five years, Mr.  
20 Pop Millow or Mr. Francis Millow has ever accepted a policy  
21 wager?

22          A I refuse to answer.

23          Q Has Mr. Francis Millow or, as he is commonly known,  
24 Pop Millow, ever worked in a gambling operation which has  
25 been supervised by you?



1  
2 A I refuse to answer.

3 Q Now, Mr. Yannicelli, it is going to be the govern-  
4 ment's position that in light of your plea to the charges  
5 contained in what has been marked into evidence as Grand  
6 Jury's Exhibit 1, you have no Fifth Amendment privilege to  
7 refuse to answer the questions that have been just posed  
8 to you.

9 Do you understand that?

10 A No.

11 MR. ABZUG: We are going down to a federal judge  
12 to determine whether you should testify before this  
13 Grand Jury despite your refusal to answer.

14 I want to advise you of that, and I'm sure the  
15 judge that is sitting will tell you the same thing,  
16 that if you continue to refuse to answer questions  
17 posed by this Grand Jury, and should the court order  
18 you to answer those questions, you will be held in  
19 contempt pursuant to Title 18, U. S. Code, Section  
20 1826A.

21 Now, what this means, Mr. Yannicelli, is that you  
22 will be held in prison for the life of this Grand Jury,  
23 which extends until April 16, 1977, with three pos-  
24 sible six-month extensions.

25 Now, I also want to advise you that the fact that

1 you are imprisoned right now on the charges, or as a  
2 result of pleading to the charges, does not mean you  
3 are going to be serving the time concurrently. If you  
4 are held in contempt by this Grand Jury, you will be  
5 serving the time on the contempt consecutive with this  
6 me.

7  
8 Do you understand that, sir?

9 By "this time," I mean the time you are presently  
10 serving as a result of your plea to the gambling in-  
11 dictment.

12 At this time, I am going to ask the Mme. Forelady,  
13 would you direct the witness to answer the last  
14 question please?

15 THE FORELADY: Would you please answer the last  
16 question?

17 THE WITNESS: I stand on my rights, please.

18 MR. ABZUG: At this time, I am going to ask that  
19 we have a brief adjournment so we can go down to the  
20 Part I judge.

21 THE FORELADY: You are excused.

22 (Whereupon, Mr. Yannicelli is taken down before the  
23 Part I judge.)  
24  
25



INDICTMENT

EXHIBIT A

A 35

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :

-v-

LAWRENCE CENTORE, a/k/a "Larry  
Black," MICHAEL YANNICELLI, PETER  
VARIANO, MICHAEL EVANGELISTA,  
WILLIAM MURTY, JAMES OSTRANDER, :  
JOHN MONACO, MICHAEL PICCIANO,  
MICHAEL DeMICHAELS, FRANK GALELLA,  
ANTHONY RUSSILLO, ALFONSO COLETTI,  
and HENRY BUCCI, :

INDICTMENT

S 76 Cr. 377

Defendants.

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COUNT ONE

The Grand Jury charges:

1. From on or about September 1, 1968,  
and continuously thereafter up to and including  
the date of the filing of this indictment, in the  
Southern District of New York, and elsewhere,  
LAWRENCE CENTORE, a/k/a "Larry Black", MICHAEL  
YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA,  
WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO,  
MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA,  
ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI,

the defendants, and Francis J. Millow, Angelina David and Morgan Davis, named herein as co-conspirators but not as defendants, unlawfully, wilfully, and knowingly, did combine, conspire, confederate and agree, together and with each other and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1955.

2. It was part of said conspiracy that said defendants would unlawfully, wilfully and knowingly, conduct, finance, manage, supervise, direct and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10 (b) involving five or more persons who conduct, finance, manage, supervise, direct and own a part of said illegal gambling business, and (c) being and remaining in substantially continuous operation for a period in excess of thirty days and have a gross revenue of two thousand dollars in a single day.

3. Among the means whereby the defendants carried out the conspiracy were the



following:

a. The defendant MICHAEL YANNICELLI, together with the defendants LAWRENCE CENTORE, a/k/a "Larry Black", and PETER VARIANO, controlled, directed, managed, and supervised the illegal gambling business, which operated at various locations around North Tarrytown, Yonkers, Hastings-on-Hudson, Tuckahoe, Eastchester, lower New Rochelle, and upper Bronx County.

b. The defendant MICHAEL EVANGELISTA, operated, conducted and managed a wireroom in the premises of 929 East 213th Street, Bronx, New York.

c. The defendant ALFONSO COLUCCI, operated, conducted and managed a wireroom in the premises of Al's Stationery Store, 95 Beekman Ave., North Tarrytown, New York.

d. Francis J. Millow, named herein as a co-conspirator but not as a defendant, operated, conducted, and managed a wireroom in the premises of 25 Cedar Street, North Tarrytown, New York.

e. The wirerooms, including those specified herein, cooperated with and assisted each other in the operation of the illegal gambling business by:

(i) Accepting sports and mutuel race horse policy wagers from individual bettors not named herein who would telephone the various wirerooms to place their bets;

(ii) Exchanging information concerning current odds (commonly known as the "line" on sporting events;

(iii) Relaying and advising each other of recent betting results including the daily winning policy number.

(iv) Placing and receiving large wagers with each other so that no single wireroom would be exposed to a large loss (commonly known as "laying off");

(v) Reviewing amounts of money owed to or by bettors or other participants in the illegal gambling business (commonly known as the "play and collects") as a result of their betting activity.



f. In addition to telephoning various wirerooms to place their bets, individual bettors in Bronx and Westchester Counties also placed wagers with runners. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, ANTHONY RUSSILLO, and Francis J. Millow, named as a co-conspirator but not as a defendant, together and with others not named herein, collected wagers from individual bettors six days a week at various locations in Bronx and Westchester Counties, including Galella's Barber Shop, 25 Main Street, Tarrytown, New York, Green Tavern Restaurant, 14 Main Street, Hastings-on-Hudson, New York, and the Headless Horseman Sports Center, 66 Beekman Avenue, North Tarrytown, New York. The defendants FRANK GALELLA, HENRY BUCCI, MICHAEL DeMICHAELS, and ANTHONY RUSSILLO, together with Francis J. Millow, named herein as a co-conspirator but not as a defendant, and with others not named herein, would, on a weekly basis, collect the losses from and pay the winnings to individual bettors.

g. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, WILLIAM MURTY, and others not named herein, would collect the

betting slips accumulated by the runners in the gambling business at various locations in the Bronx and Westchester Counties. The defendants JOHN MONACO, JAMES OSTRANDER, MICHAEL PICCIANO, and WILLIAM MURTY would meet at various locations in Bronx County, including the vicinity of the intersection of Bronx Boulevard at 239th Street, Bronx, New York, to facilitate the transfer of the accumulated betting slips to a central location, commonly known as a "bank", where the betting slips for each runner would be examined to determine (1) the total amount of wagers placed with the runner, (2) his commission based upon 30% of the total amount of wagers which he collected, (3) the number of winning wagers received as well as the gross amount wagered in the entire operation, and (4) the net profit or loss to the defendants MICHAEL YANNICELLI and PETER VARIANO after the winning wagers, commissions and rents for the various wirerooms were paid.

#### OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants commit-



ted and caused to be committed, among others, the following over acts in the Southern District of New York:

1. In or around December, 1968, the defendant LAWRENCE CENTORE spoke to a co-conspirator whose identity is known to the grand jury in the vicinity of Bruno's Restaurant, Yonkers, New York.

2. In or around March, 1969, the defendant LAWRENCE CENTORE spoke to the defendant MICHAEL YANNICELLI.

3. In or around August, 1971, the defendant LAWRENCE CENTORE met a co-conspirator whose identity is known to the grand jury at approximately 9:00 a.m., in Yonkers, New York.

4. In or around March, 1971, the defendant PETER VARIANO met with co-conspirator Francis J. Millow at the Green Tavern, 14 Main Street, Hastings-on-Hudson, New York.

5. In or around May, 1974, the defendants MICHAEL YANNICELLI and PETER VARIANO met with co-conspirator Francis J. Millow in Hastings-on-Hudson, New York.

6. In or around August of 1973, the defendants HENRY BUCCI and PETER VARIANO met with

co-conspirator Francis J. Millow at the Sleepy Hollow High School, North Tarrytown, New York.

7. On or about October 20, 1974, the defendant HENRY BUCCI met with co-conspirator Francis J. Millow at approximately 1:00 p.m.

8. On or about December 12, 1974, the defendant MICHAEL EVANGELISTA gave the defendant MICHAEL PICCIANO an envelope in the immediate vicinity of 239th Street and Bronx Boulevard, Bronx, New York.

9. On or about December 16, 1974, the defendant MICHAEL EVANGELISTA gave the defendant WILLIAM MURTY an envelope in the immediate vicinity of 949 East 214 Street, Bronx, New York.

10. On or about December 18, 1974, the defendants WILLIAM MURTY, MICHAEL PICCIANO and JAMES OSTRANDER met in the immediate vicinity of Bronx Boulevard and 239th Street, Bronx, New York.

11. In or around December, 1974, the defendant JOHN MONACO introduced the defendant WILLIAM MURTY to Christine Romeo.

12. On or about December 21, 1974, the defendant JOHN MONACO handed the defendant JAMES



OSTRANDER at least five envelopes in Bronx County, New York.

13. On or about December 31, 1974, the defendant MICHAEL EVANGELISTA entered the premises of 929 East 213th Street, Bronx, New York.

14. In or around May, 1972, the defendant MICHAEL DeMICHAELS met in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

15. In or around July, 1972, the defendant MICHAEL DeMICHAELS had a conversation in Hastings-on-Hudson, New York, with a co-conspirator whose identity is known to the grand jury.

16. On or about November 13, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

17. On or about December 7, 1974, the defendant FRANK GALELLA had a conversation with co-conspirator Francis J. Millow.

18. On or about November 22, 1974, the defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

19. On or about December 4, 1974, the

defendant ALFONSO COLETTI had a conversation with co-conspirator Francis J. Millow.

20. On or about November 14, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow.

21. On or about November 28, 1974, the defendant ANTHONY RUSSILLO had a conversation with co-conspirator Francis J. Millow

(Title 18, United States Code,  
Section 371).

COUNT TWO

The Grand Jury further charges:

From on or about April 15, 1971,  
and continuously thereafter up to and including  
the date of the filing of this indictment, in the  
Southern District of New York and elsewhere,  
LAWRENCE CENTORE, a/k/a "Larry Black", MICHAEL  
YANNICELLI, PETER VARIANO, MICHAEL EVANGELISTA,  
WILLIAM MURTY, JAMES OSTRANDER, JOHN MONACO,  
MICHAEL PICCIANO, MICHAEL DeMICHAELS, FRANK GALELLA,  
ANTHONY RUSSILLO, ALFONSO COLETTI and HENRY BUCCI,  
the defendants, unlawfully, wilfully, and knowingly,  
did conduct, finance, manage, supervise, direct



and own an illegal gambling business, to wit, a sports betting and mutual race horse policy business (a) being in violation of the laws of the State of New York, to wit, New York State Penal Law, Sections 225.05 and 225.10, (b) involving five or more persons who conduct, finance, manage, supervise, direct and won a part of said illegal gambling business, and (c) remaining in substantially continuous operation for a period in excess of thirty days, and having a gross revenue of two thousand dollars in a single day.

(Title 18, United States Code, Sections 1955 and 2.)

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Foreman

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ROBERT B. FISKE, Jr.  
United States Attorney